RESOLUTION OF THE JEFFERSON COUNTY COMMISSION

WHEREAS,

A. On November 15, 1948, the Constitution of the State of Alabama was amended by the Jefferson County Sewer Amendment ("Amendment 73"), *see* R-2067,[1] pertaining to the operation, repair, improvement, and management of the Jefferson County sanitary sewer system (the "System");

WHEREAS,

B. Amendment 73 vests "[t]he governing body of Jefferson county" with "full power and authority to manage, operate, control and administer" the System, "and, to that end, [to] make any reasonable and nondiscriminatory rules and regulations fixing rates and charges, providing for the payment, collection and enforcement thereof, and the protection of its property," R-2067;

WHEREAS,

C. The Jefferson County Commission (the "Commission") is the governing body of Jefferson County, Alabama (the "County") referenced in Amendment 73;

WHEREAS,

D. On September 19, 1949, Act Number 619, 1949 Ala. Acts 949, *et seq.* ("Act 619"), *see* R-2068-77, a supplement to Amendment 73, became effective by its terms;

WHEREAS,

E. Act 619 restates and confirms that the Commission has full "power to maintain and operate" the System and to levy and collect "sewer rentals or service charges" from "the persons and property whose [sewage] is disposed of or treated by the [System]," R-2069 (Act 619 §§ 2, 4);

WHEREAS,

F. Act 619 provides that the Commission "shall prescribe and from time to time when necessary revise a schedule of [sewer rates and charges] which shall . . . be such that the revenues derived therefrom will at all times be adequate but not in excess of amounts reasonably necessary [(i)] to pay all reasonable expenses of operation and maintenance of the [System], including reserves and insurance[; (ii)] to make any necessary or appropriate replacements, extensions or

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[1] Citations to "R-___" are to the consecutively paginated record (the "Record") on file in the Minute Clerk's office and available for public inspection and copying.

improvements [to the System; and (iii)] to pay punctually the principal of and interest on any bonds issued by the County pursuant to [Amendment 73]," R-2070-71 (Act 619 § 6(a));

WHEREAS,

G. Act 619 directs that sewer rates and charges "shall, as nearly as may be practicable and equitable, be uniform throughout the county for the same type, class and amount of use or service of the [S]ystem, and may be based or computed either on the consumption of water on or in connection with the real property served, making due allowance for commercial use of water or for water not entering the [S]ystem, or on the number and kind of water outlets on or in connection with such real property, or on the number and kind of plumbing or sewerage [*sic*] fixtures or facilities on or in connection with such real property, or on the number of persons residing or working on or otherwise connected or identified with such real property, or on the capacity of the improvements on or connected with such real property, or on any other factors determining the type, class and amount of use or service of the [S]ystem, or on any combination of any such factors, and may give weight to the characteristics of the sewerage [*sic*] and other wastes and any other special matter affecting the cost of treatment and disposal thereof . . . ," R-2070 (Act 619 § 5);

WHEREAS,

H. Act 619 creates a five-member Board of Arbitration, appointed by the Commission, with jurisdiction to hear and determine challenges to sewer rates "by any user of the [System]," R-2071-73 (Act 619 § 6(b));

WHEREAS,

I. All five seats on the Board of Arbitration are currently vacant, and are due to be filled by the Commission;

WHEREAS,

J. Although all bonded indebtedness authorized or contemplated by Amendment 73 and Act 619 has been fully repaid and is no longer outstanding, the Alabama Supreme Court has ruled that the powers vested in the Commission with respect to the System by Amendment 73 and Act 619 continue to apply notwithstanding such repayment and satisfaction of bonded indebtedness, *see Jefferson County v. City of Birmingham*, 55 So. 2d 196 (Ala. 1951); *Opinion of the Justices*, 251 So. 2d 755 (Ala. 1971); *Shell v. Jefferson County*, 454 So. 2d 1331 (Ala. 1984); *Jefferson County v. City of Leeds*, 675 So. 2d 353 (Ala. 1995);

WHEREAS,

K. On May 11, 1982, the Commission adopted the Jefferson County Sewer Use/Pretreatment Ordinance, which ordinance has been amended from time to

time thereafter, most recently on March 31, 2009 (as amended, the "Sewer Use and Pretreatment Ordinance"), R-1786-1834, and which ordinance (as well as the System generally) is administered on a day-to-day basis by the County's Environmental Services Department ("ESD");

WHEREAS,

L. On December 9, 1996, in a consolidated civil action styled *R. Allen Kipp, Jr., et al. v. Jefferson County, Alabama, et al.*, Case No. 93-G-2492-S (N.D. Ala.) (the "*Kipp* Litigation"), the United States District Court for the Northern District of Alabama entered a consent decree (the "Consent Decree") obligating the County to, *inter alia*, "eliminat[e] further bypasses and unpermitted discharges of untreated wastewater containing raw sewage to the Black Warrior and Cahaba River Basins," "eliminat[e] sewer system overflows," "achiev[e] full compliance with [the County's] NPDES permits," and "achiev[e] full compliance with the Clean Water Act," 33 U.S.C. §§ 1251, *et seq.* (the "Clean Water Act"); *see also* Michael D. Floyd, *A Brief History of the Jefferson County Sewer Crisis*, 40 CUMB. L. REV. 691, 693 (2009-2010) ("*Brief History*") (describing the *Kipp* Litigation and resulting Consent Decree as a "tectonic shift" for the County);

WHEREAS,

M. The Consent Decree required the incorporation of many formerly separate municipal sewer lines (collectively, the "*Kipp* Assets") into the System, with the County assuming full responsibility for the remediation of the *Kipp* Assets, *see id*. at 698; *see also In re Jefferson County*, 474 B.R. 228, 238 (Bankr. N.D. Ala. 2012) (the "Stay Ruling"), *on direct appeal sub nom. Assured Guaranty Municipal Corp., et al. v. Jefferson County*, Case No. 12-13654 (11th Cir.) (noting that the Consent Decree "shifted the costs of disrepair from the local governments and their inhabitants to the County and its inhabitants"); *id*. at 237 ("When the County acquired these sewer systems from the governments located in Jefferson County, it was without compensation by any of them and without investigation of the systems' conditions by the County.");

WHEREAS,

N. Notwithstanding that as an accounting matter (pursuant to GASB 34) the *Kipp* Assets are carried on the County's books at approximately $939 million, the County paid nothing for the *Kipp* Assets and the *Kipp* Assets have actually carried, and will continue to carry, significant liabilities exceeding the book value of the *Kipp* assets due to, *inter alia*, their poor condition and the attendant liabilities under the Consent Decree and the Clean Water Act;

WHEREAS,

O. On February 12, 1997, to finance the cost of complying with the Consent Decree, the Commission adopted a resolution and order that, *inter alia*, authorized the "President of the Commission to execute and deliver, for and in the name and on

behalf of the County, a Trust Indenture" (the "Original Indenture"), *see* R-0604-0715, pursuant to which all previously outstanding debt pertaining to System was fully refunded and repaid, and new debt was incurred;

WHEREAS,

P. The Original Indenture has been supplemented by eleven supplemental indentures (collectively and together with the Original Indenture, the "Indenture");

WHEREAS,

Q. Debt was issued under the Indenture in the form of warrants authorized by provisions of the Alabama Code that permit the County "to sell and issue warrants of the county for the purpose of paying costs of public facilities," ALA. CODE § 11-28-2;

WHEREAS,

R. As permitted by Alabama law, the warrants issued under the Indenture (the "Sewer Warrants") are not general obligation debt supported by the full faith and credit of the County; instead the Sewer Warrants are "limited obligation debt of the county payable solely from specified pledged funds," *id*.;

WHEREAS,

S. The "specified pledged funds" from which the Sewer Warrants are payable are defined in the Indenture as the "Pledged Revenues," R-0622, 0626-27 (Indenture §§ 1.1 & 2.1), and are alternatively sometimes referred to as the "Net Revenues," *see* Stay Ruling, 474 B.R. at 252; *see also The Bank of New York Mellon v. Jefferson County (In re Jefferson County)*, 474 B.R. 725 (Bankr. N.D. Ala. 2012) (the "Net Revenues Opinion"), *appeal filed but not yet docketed*;

WHEREAS,

T. Among other provisions, the Indenture provides that the County must "fix, revise and maintain such rates for services furnished by the System as shall be sufficient (i) to provide for the payment of the interest and premium (if any) on and the principal of the [Sewer Warrants], as and when the same become due and payable, (ii) to provide for the payment of the Operating Expenses and (iii) to enable the County to perform and comply with all of its covenants contained in the Indenture," *see* R-0682 (Indenture § 12.5(a));

WHEREAS,

U. Among other provisions, the Indenture contains a rate covenant (the "Rate Covenant"), which provides that "[t]he County will make from time to time, to the extent permitted by law, such increases and other changes in [sewer] rates and charges as may be necessary . . . to provide, in each Fiscal Year, Net Revenues

Available for Debt Service in an amount that shall result in compliance" with certain debt coverage formulas, *see* R-0682-83 (Indenture § 12.5(b)); *provided, however*, that non-compliance with the Rate Covenant will not be an event of default under the Indenture if "the County employs a utility system consultant to review the System and its existing rates and fees and makes a good faith effort to comply with the recommendations of such consultant," *see* R-0690 (Indenture § 13.1(b)(ii));

WHEREAS,

V. On February 12, 1997, the same day the Commission approved the Original Indenture, the Commission adopted a resolution (the "Automatic Rate Adjustment Resolution") amending the Sewer Use and Pretreatment Ordinance "to establish procedures that will result in periodic automatic increases in the rates and charges for the services provided by the System," such that sewer rates would automatically keep pace with debt service costs, regardless of how much money was borrowed under the Indenture, and without any further action of the Commission;

WHEREAS,

W. Compliance with the Consent Decree's requirements was "initially estimated [to] cost County ratepayers $1.2 to $1.5 billion over the next decade," *United States v. McNair*, 605 F.3d 1152, 1165 n.1 (11th Cir. 2010); *see also* Charles S. Wagner, *The Untold History of the Jefferson County Waste Water Treatment System: 1972 – Present*, 40 CUMB. L. REV. 797, 811 (2009-2010) ("Some estimates at the time placed the potential cost of the work at $1.5 billion, but these estimates were based on incomplete information."); James H. White, III, *Financing Plans for the Jefferson County Sewer System: Issues and Mistakes*, 40 CUMB. L. REV. 717, 719 (2009-2010) ("*Financing Plans*") ("The original estimate of the capital costs of complying with the consent decree was $250 million.");

WHEREAS,

X. The actual amount borrowed under the Indenture between 1997 and 2003 was approximately $3.6 billion – of which approximately $3.2 billion remains unpaid, *see* Stay Ruling, 474 B.R. at 237;

WHEREAS,

Y. Significantly more money was spent building and rehabilitating the System than was initially estimated, due in part to what the United States Court of Appeals for the Eleventh Circuit has characterized as a criminal "kleptocracy" – "a term used to describe 'a government characterized by rampant greed and corruption,'" R-2333 (*United States v. White*, 663 F.3d 1207, 1209, slip op. at 2 (11th Cir. 2011) (alterations omitted)) ("To that definition dictionaries might add, as a helpful illustration: 'See, for example, Alabama's Jefferson County Commission in the period from 1998 to 2008.' During those years, five members or former members

of the commission that governs Alabama's most populous county committed crimes involving their 'service' in office for which they were later convicted in federal court. And the commission has only five members."); *accord* Stay Ruling, 474 B.R. at 239-40 ("Not to be outdone by the public sector is the business sector. . . . Those involved in investment banking and municipal finance were not out of the loop when it came to dishonest or inappropriate conduct. Some of those involved in the development and sales of the types of financial instruments used in part by the County for its sewer system's needs have committed crimes related to what was sold to the County. Others have not been charged with crimes, but have entered settlements with the United States Securities and Exchange Commission where there is no admission of wrongdoing, but payments in the tens of millions of dollars have been made."); *see generally* R-2284-2331 (*United States v. Langford*, 647 F.3d 1309 (11th Cir. 2011));

WHEREAS,

Z. The System-related fraud ultimately resulted in hundred-plus-count federal criminal indictments charging dozens of defendants with crimes that included "conspiracy to commit bribery, honest services mail fraud, mail fraud, and obstruction of justice," R-2117 (*McNair*, 605 F.3d at 1164-65, slip op. at 2); *see also* Stay Ruling, 474 B.R. at 240 ("So far, the total of public and private persons and entities determined to have committed crimes related to the County's sewer system is somewhere in the low twenties.");

WHEREAS,

AA. The fraud reached the highest levels of decision-making authority in respect of the System, ultimately resulting in the criminal convictions of "the Environmental Services Department's former director, its former assistant director, its former chief civil engineer, its former chief construction maintenance supervisor, one of its former engineers, and one of its former maintenance supervisors," R-2336 (*White*, 663 F.3d at 1211 n.3, slip op. at 5); *see also* R-2189 (*McNair*, 605 F.3d at 1196, slip op. at 74 (describing "pervasive and entrenched corruption"));

WHEREAS,

BB. Much of the fraudulent activity concerned the design and construction of the System, and included, *inter alia*,

(i.) Creating made-up projects for bribe payers with nothing of value to offer ESD, *see, e.g.*, R-2098-99 (*United States v. US Infrastructure, Inc.*, 576 F.3d 1195, 1210, slip op. at 21-22 (11th Cir. 2009) ("*USI*")) (describing how the County Commissioner in charge of ESD received $10,000 in "free" electrical work, and in exchange asked ESD "'to see if we could develop a project that [the electrical engineer] could perform,'" notwithstanding that the engineer "was not able to do the work that [ESD] typically required");

(ii.) Distorting the bid process by limiting the pool of eligible bidders to only those who were willing to pay bribes, *see, e.g.*, R-2119 (*McNair*, 605 F.3d at 1165 n.2, slip op. at 4) (explaining how the 11-member technical committee tasked with finding qualified bidders for ESD projects included at least five criminals); R-2129 (*id.* at 1169-70, slip op. at 14) (describing how the technical committee "effectively limited the 'big jobs' to only three bidders" – all of whom paid substantial bribes); *see also* R-2157 (*id.* at 1181, slip op. at 42) ("When two non-local competitors finally qualified to join the bidding in 2001, prices [for rehabilitating sewer lines] quickly dropped from over $50 per linear foot to about $28."); *see also Brief History*, 40 CUMB. L. REV. at 700 (describing the County's strict "prequalification" process as "unusual for the utility industry");

(iii.) Increasing the profit margins of contractors who were willing to pay bribes, *see, e.g.*, R-2130 (*McNair*, 605 F.3d at 1170, slip op. at 15) ("In 1996 and 1997, at the sewer rehabilitation's outset, [Roland Pugh Construction, Inc.] made gross profits of 10%, and as the project continued and payments were made to [County] officials, the company's sewer rehabilitation profits increased to 50% in 1999, 40% in 2000, and 45% in 2001, making [Pugh] tens of millions of dollars in each of those years."); *see also* R-2129 (*id.*, slip op. at 14) (Pugh's CEO admitting that in exchange for providing "envelopes of cash" to the Commissioner in charge of ESD, "our company [went] from a normal struggling contracting company in the mid to late '90s, to a thriving, wealthy, strong construction company");

(iv.) Directly adding the costs of bribing government officials to the cost of working on the System, *e.g.*, R-2132-33 (*id.* at 1171, slip op. at 17-18) (describing how $52,990 worth of work at a Commissioner's private business was "coded . . . as expenses on a [County] sewer project"); R-2087 (*USI*, 576 F.3d at 1205, slip op. at 10) ("The evidence shows an extended plan or scheme by USI, a company that received $50 million in government contracts over a period of years, to pass nearly $140,000 through bogus invoice payments to the County Commissioner almost wholly responsible for that $50 million.");

(v.) Indirectly adding to the costs of the System by declining to enforce contract deadlines and other terms for which the County had paid valuable consideration, *see, e.g.*, R-2146 (*McNair*, 605 F.3d at 1177, slip op. at 31) ("Swann declined to invoke the performance bond against RAST, which would have guaranteed the project's completion at the original contract price of $27.8 million. Instead, RAST won a re-bid for an additional contract worth $23.8 million. Consequently, the County effectively paid RAST over $50 million for work RAST was obligated to perform under the original $27.8 million contract."); R-2193-94 (*id.* at 1198, slip op. at 78-79) (describing an instance in which a County official retroactively extended the completion deadline on a major project in exchange for a

$4,500 "scholarship" for the official's son, thereby relieving the contractor of more than $100,000 in liquidated damages);

(vi.) Defeating the checks and balances built into the contracting system, insofar as even the "independent consulting engineers, whose jobs were to make sure the contractors performed according to specifications and to sign off on payments and requests for change orders," R-2128-29 (*id*. at 1169, slip op. at 13-14), were corrupt; and

(vii.) Impeding the proper accounting of System assets by misclassifying fraudulent payments on some projects as payments on other projects to avoid specific dollar caps, *see, e.g.*, R-2161-62 (*id.* at 1183, slip op. at 46-47) (explaining how an emergency contract for replacing sewer pipes in the Paradise Lake subdivision was accounted for as part of an unrelated Cahaba River project to skirt the $50,000 limit for emergency projects; the contractor was paid $857,000, and made a 50% profit);

WHEREAS,

CC. Other corrupt and criminal behavior concerned the complex financing structure whereby approximately $3.6 billion was borrowed, including, *inter alia*,

(i.) Payment of bribes totaling "more than $240,000 in cash, clothing, and jewelry" to former Commission President Larry Langford from "Blount–Parrish & Company ('Blount–Parrish'), an investment banking firm that specialized in the underwriting and marketing of municipal bonds," R-2285-86 (*Langford*, 647 F.3d at 1314-15, slip op. at 2-3);

(ii.) Corrupt selection of "Blount–Parrish to participate in many of the County's financial transactions," including a series of disastrous interest rate swap deals, R-2288-89 (*id*. at 1315-16, slip op. at 5-6); *see also* R-2289-90 (*id*. at 1316, slip op. at 6-7) ("All told, Blount–Parrish was paid some $7 million in fees related to transactions involving Jefferson County, which . . . yielded a 'net benefit' to Blount–Parrish of about $5.5 million."); and

(iii.) Improper conduct warranting a cash penalty of $75 million – together with termination of $647 million of interest rate swap penalties – levied by the Securities and Exchange Commission ("SEC") against J.P. Morgan, *see Brief History*, 40 CUMB. L. REV. at 713-14; *cf. Financing Plans*, 40 CUMB. L. REV. at 735 ("For many years it was known in financial circles in New York and elsewhere that J.P. Morgan was abusing Jefferson County in interest rate swap transactions. The term 'abuse' understates the seriousness of J.P. Morgan's actions.");

WHEREAS,

DD. Although the precise scope and effect of the fraud may never be known, *cf*. R-2112 (*USI*, 576 F.3d at 1215, slip op. at 35) (noting that the criminal convictions include obstruction of justice, for providing false information to the grand jury investigating these crimes), the record adduced during the extensive federal criminal proceedings suggests hundreds of millions of dollars in direct effects of the bribery and corruption, *see* R-2235-36 (*McNair*, 605 F.3d at 1217 n.96, slip op. at 120-21) (noting that one defendant's pre-sentence investigation report calculated a "net profit or benefit" of $67,980,043); R-2251 (*id*. at 1224 n.114, slip op. at 136) (net profit or benefit of $42,460,880 for another defendant); R-2338 (*White*, 663 F.3d at 1212, slip op. at 7) ($1,395,552 in professional fees paid to another defendant were "received in return for" cash bribes), with untold additional dollars lost through corruption of the bidding process, make-work projects, improper remission of penalties, and the like;

WHEREAS,

EE. In addition, the financing aspects of the fraud – which involved switching the County's fixed-rate debt to the variable-rate variety (including so-called "synthetic fixed" debt) – left the County particularly vulnerable to the market failures of 2008, and sped the County's default and its attendant consequences, *see, e.g.*, *Financing Plans*, 40 CUMB. L. REV. at 748-49 (explaining that although the 2008 bond insurer downgrades had "no consequences to the County" with respect to its fixed-rate debt, "[w]hen the insurers of the synthetic fixed rate debt were downgraded, however, the County's debt service ratcheted up, effectively doubling or tripling");

WHEREAS,

FF. The facts of the massive and long-running fraud perpetrated on the County and its citizens have been established beyond a reasonable doubt after full and fair trials, *see, e.g.*, R-2125 (*McNair*, 605 F.3d at 1168, slip op. at 10) (noting that the Government and the defense called 36 witnesses and 23 witnesses, respectively, at just one of the trials), and on an evidentiary showing that has been characterized by the United States Court of Appeals for the Eleventh Circuit as "overwhelming[,]" R-2118 (*id*. at 1165, slip op. at 3), grounded in a "wealth of evidence," R-2263 (*id*. at 1230, slip. op at 148), "ample," R-2342 (*White*, 663 F.3d at 1213, slip op. at 11), and "more than sufficient," R-2088 (*USI*, 576 F.3d at 1205, slip op. at 11);

WHEREAS,

GG. To ascertain an approximate amount by which the myriad forms of fraud, waste, and improper conduct has inflated the cost of the System, the County retained an expert engineering firm – CH2M Hill – to evaluate the extent to which the current book value of the assets comprising the System compare to what a highly

regarded engineering-procurement-construction firm estimates the System should have cost;

WHEREAS,

HH. The current book value of the assets comprising the System is approximately $2.819 billion; of that total, approximately $2.386 billion consists of wastewater treatment plant ("WWTP") assets;

WHEREAS,

II. CH2M Hill has prepared a draft analysis, *see* R-1931-2066, estimating the cost of building each of the System's nine WWTPs to their current permitted capacity, calculating each value initially in 2012 dollars and then adjusting the result for inflation back to each WWTP's in-service date; additionally, for the three most costly WWTPs, CH2M Hill conducted an alternative analysis of the cost of building more appropriately-sized facilities – *i.e.*, WWTPs designed to treat what the System actually handles (with appropriate provisions for wet weather flow events and System growth), rather than the much larger permitted capacity;

WHEREAS,

JJ. Although CH2M Hill's conclusions are still in draft form and subject to revision, CH2M Hill has preliminarily estimated the costs for each of the County's nine WWTPs as follows:

(i.) ***Valley Creek (Current Flows, 2012 Dollars)***: Sized based on current 20-year projected flows, the total cost, in 2012 dollars, would have been approximately $347.2 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $520.8 million to approximately $243 million), *see* R-1939;

(ii.) ***Valley Creek (Current Flows, 2005 Dollars)***: Adjusting that figure ($347.2 million) for inflation correlates to an acquisition cost of approximately $281.6 million, *see* R-1939; which would be depreciated to a current book value of $230.5 million (assuming a 40-year useful life for plant assets);

(iii.) ***Valley Creek (Permitted Flows, 2012 Dollars)***: Sized based on 2012 permitted flows, the total cost, in 2012 dollars, would have been approximately $518.2 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $777.3 million to approximately $362.7 million); *see* R-1938;

(iv.) ***Valley Creek (Permitted Flows, 2005 Dollars)***: Adjusting that figure ($518.2 million) for inflation correlates to an acquisition cost of approximately $420.3 million, *see* R-1938; which would be depreciated to

a current book value of approximately $344.1 million (assuming a 40-year useful life for plant assets);

(v.) ***Village Creek (Current Flows, 2012 Dollars)***: Sized based on current 20-year projected flows, the total cost, in 2012 dollars, would have been approximately $357.6 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $536.4 million to approximately $250.3 million), *see* R-1939;

(vi.) ***Village Creek (Current Flows, 2003 Dollars)***: Adjusting that figure ($357.6 million) for inflation correlates to an acquisition cost of approximately $253.9 million, *see* R-1939; which would be depreciated to a current book value of approximately $194.6 million (assuming a 40-year useful life for plant assets);

(vii.) ***Village Creek (Permitted Flows, 2012 Dollars)***: Sized based on 2012 permitted flows, the total cost, in 2012 dollars, would have been approximately $454 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $681 million to approximately $317.8 million), *see* R-1938;

(viii.) ***Village Creek (Permitted Flows, 2003 Dollars)***: Adjusting that figure ($454 million) for inflation correlates to an acquisition cost of approximately $322.4 million, *see* R-1938; which would be depreciated to a current book value of approximately $247.2 million (assuming a 40-year useful life for plant assets);

(ix.) ***Five Mile Creek (Current Flows, 2012 Dollars)***: Sized based on current 20-year projected flows, the total cost, in 2012 dollars, would have been approximately $98.9 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $148.4 million to approximately $69.3 million), *see* R-1940;

(x.) ***Five Mile Creek (Current Flows, 2008 Dollars)***: Adjusting that figure ($98.9 million) for inflation correlates to an acquisition cost of approximately $92.8 million, *see* R-1940; which would be depreciated to a current book value of approximately $83.9 million (assuming a 40-year useful life for plant assets);

(xi.) ***Five Mile Creek (Permitted Flows, 2012 Dollars)***: Sized based on 2012 permitted flows, the total cost, in 2012 dollars, would have been approximately $179.7 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $269.6 million to approximately $125.8 million), *see* R-1938;

(xii.) ***Five Mile Creek (Permitted Flows, 2008 Dollars)***: Adjusting that figure ($179.7 million) for inflation correlates to an acquisition cost of approximately $168.5 million, *see* R-1938; which would be depreciated to

a current book value of approximately $152.4 million (assuming a 40-year useful life for plant assets);

(xiii.) ***Cahaba (Permitted Flows, 2012 Dollars)***: The total cost, in 2012 dollars, would have been approximately $150.4 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $225.6 million to approximately $105.3 million), *see* R-1938;

(xiv.) ***Cahaba (Permitted Flows, 2005 Dollars)***: Adjusting that figure ($150.4 million) for inflation correlates to an acquisition cost of approximately $121 million, *see* R-1938; which would be depreciated to a current book value of approximately $99.1 million (assuming a 40-year useful life for plant assets);

(xv.) ***Leeds (Permitted Flows, 2012 Dollars)***: The total cost, in 2012 dollars, would have been approximately $57.1 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $85.6 million to approximately $40 million), *see* R-1939;

(xvi.) ***Leeds (Permitted Flows, 1995 Dollars)***: Adjusting that figure ($57.1 million) for inflation correlates to an acquisition cost of approximately $34.3 million, *see* R-1939; which would be depreciated to a current book value of approximately $19.3 million (assuming a 40-year useful life for plant assets);

(xvii.) ***Turkey Creek (Permitted Flows, 2012 Dollars)***: The total cost, in 2012 dollars, would have been approximately $64.7 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $97.1 million to approximately $45.3 million), *see* R-1939;

(xviii.) ***Turkey Creek (Permitted Flows, 2005 Dollars)***: Adjusting that figure ($64.7 million) for inflation correlates to an acquisition cost of approximately $51.7 million, *see* R-1939; which would be depreciated to a current book value of approximately $41.9 million (assuming a 40-year useful life for plant assets);

(xix.) ***Trussville (Permitted Flows, 2012 Dollars)***: The total cost, in 2012 dollars, would have been approximately $49.8 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $74.7 million to approximately $34.8 million), *see* R-1939;

(xx.) ***Trussville (Permitted Flows, 1998 Dollars)***: Adjusting that figure ($49.8 million) for inflation correlates to an acquisition cost of approximately $32.6 million, *see* R-1939; which would be depreciated to a current book value of approximately $20.8 million (assuming a 40-year useful life for plant assets);

(xxi.) ***Prudes Creek (Permitted Flows, 2012 Dollars)***: The total cost, in 2012 dollars, would have been approximately $23 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $34.5 million to approximately $16.1 million), *see* R-1939;

(xxii.) ***Prudes Creek (Permitted Flows, 2004 Dollars)***: Adjusting that figure ($23 million) for inflation correlates to an acquisition cost of approximately $17.6 million, *see* R-1939; which would be depreciated to a current book value of approximately $14.0 million (assuming a 40-year useful life for plant assets);

(xxiii.) ***Warrior (Permitted Flows, 2012 Dollars)***: The total cost, in 2012 dollars, would have been approximately $13.8 million (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $20.8 million to approximately $9.7 million), *see* R-1939;

(xxiv.) ***Warrior (Permitted Flows, 2006 Dollars)***: Adjusting that figure ($13.8 million) for inflation correlates to an acquisition cost of approximately $11.6 million, *see* R-1939; which would be depreciated to a current book value of approximately $9.8 million (assuming a 40-year useful life for plant assets);

WHEREAS,

KK. Aggregating the CH2M Hill estimates for all nine WWTPs leads to the following totals:

(i.) ***Current Flows, 2012 Dollars***: Sized based on current 20-year projected flows, the total cost, in 2012 dollars, would have been approximately $1.163 billion (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $1.744 billion to approximately $814 million), *see* R-1940;

(ii.) ***Current Flows, Inflation-Adjusted Dollars***: Adjusting that figure ($1.163 billion) for inflation correlates to an acquisition cost of approximately $897.9 million, *see* R-1940; which would be depreciated to a current book value of approximately $714.0 million (assuming a 40-year useful life for plant assets);

(iii.) ***Permitted Flows, 2012 Dollars***: Sized based on 2012 permitted flows, the total cost, in 2012 dollars, would have been approximately $1.511 billion (with an expected accuracy range of plus 50% to minus 30% – *i.e.*, approximately $2.266 billion to approximately $1.058 billion), *see* R-1939;

(iv.) ***Permitted Flows, Inflation-Adjusted Dollars***: Adjusting that figure ($1.511 billion) for inflation correlates to an acquisition cost of approximately $1.181 billion, *see* R-1939; which would be depreciated to

a current book value of approximately $948.5 million (assuming a 40-year useful life for plant assets);

WHEREAS,

LL. The range between which the System's current book value of approximately $2.819 billion differs from the value of facilities required to deliver sewer services as a result of the *Kipp* Assets and excessive costs incurred in connection with the WWTPs is between $1.597 billion (permitted flows) and $1.832 billion (current flows);

WHEREAS,

MM. This range is conservative insofar as it assumes no deduction for waste, fraud or abuse in connection with any of the System's other fixed assets;

WHEREAS,

NN. The substantial increase in costs "due to poor planning, waste, and fraud," *Financing Plans*, 40 CUMB. L. REV. at 719, resulted in increased debt due under the Indenture, which in turn led to higher debt service costs;

WHEREAS,

OO. The Automatic Rate Adjustment Resolution provided that sewer rates should automatically increase each year to a level sufficient to satisfy increased costs, without any action by the Commission or any input from the public, *see* R-1612 (Memorandum Opinion dated June 12, 2009 (the "Proctor Decision"), in *The Bank of New York Mellon, et al. v. Jefferson County, Alabama, et al.*, Case No. 2:08-cv-01703-RDP (N.D. Ala.) (the "Federal Receivership Case")) (describing "periodic, automatic rate increases in certain circumstances … designed to ensure the County's ability to service its debt"); *see also* R-1638-39 n.23 (Proctor Decision); *cf. Financing Plans*, 40 CUMB. L. REV. at 730-31 ("Sewer rates adopted by the Commission have always been thought to require a public hearing prior to adoption. The automatic rate increase ordinance removed this [step and] made rate increases a mathematical process, divorced from policy and political considerations.");

WHEREAS,

PP. Between 1997 and 2008, sewer rates increased approximately 329%, and an additional automatic rate increase of more than 300% was set to take effect on January 1, 2009, pursuant to the Automatic Rate Adjustment Resolution;

WHEREAS,

QQ. On December 16, 2008, the Commission "suspend[ed] the operation of the [Automatic Rate Adjustment Resolution]," and directed that "there shall be no

adjustment of System rates pending further action of the Commission after such notice and hearing as required by applicable law," R-1602-03;

WHEREAS,

RR. The Commission next acted on sewer rates and charges on March 31, 2009 (by amending the Sewer Use and Pretreatment Ordinance to levy a fee for processing applications for private water meters), and the Commission has not modified sewer rates and charges since;

WHEREAS,

SS. The preceding circumstances, together with significant market failures and bond-insurer downgrades, *see generally* Hon. Spencer T. Bachus, *Federal Policy Responses to the Predicament of Municipal Finance*, 40 CUMB. L. REV. 759, 765-67 (2009-2010) ("*Policy Responses*"); *cf*. R-1613 (Proctor Decision) ("To be sure, the County originally borrowed (and was loaned) far too much money."), led to a default under the Indenture;

WHEREAS,

TT. As a consequence of that default, by order dated September 22, 2010 (the "Receiver Order") in *The Bank of New York Mellon, et al. v. Jefferson County, Alabama, et al.*, Case No. CV-2009-02318 (Ala. Cir. Ct.) (the "State Receivership Case"), the circuit court of Jefferson County appointed a receiver (the "Receiver") over the System and ruled that the Receiver had exclusive power to exercise the Commission's authority under Amendment 73 and Act 619;

WHEREAS,

UU. Because the Receiver Order prohibited the Commission from taking any action concerning the System (including fixing rates and charges), the Commission was enjoined from considering any rate increase from September 2010 through the filing of the County's chapter 9 bankruptcy case in the United States Bankruptcy Court for the Northern District of Alabama (the "Bankruptcy Court") on November 9, 2011;

WHEREAS,

VV. After the Bankruptcy Court found on January 6, 2012, in the Stay Ruling, that the Commission once again may exercise the plenary authority provided for in Amendment 73 and Act 619, the Commission gave public notice of its intent to "exercise its constitutional obligations in respect of sewer rates and charges on the basis of . . . testimony, evidence and public comments received during and in connection with [a series of] public sewer rate hearings," R-0531, and to that end convened public hearings at the Birmingham-Jefferson Civic Center on June 12, 2012, at the Bessemer Courthouse on July 24, 2012, and in the John L. Carroll

Moot Courtroom at Samford University's Cumberland School of Law on August 20, 2012;

WHEREAS,

WW. Ample public notice was provided in advance of each of the hearings, *see* R-0001-02; R-0203-04; R-0533-35, and all stakeholders – including "ratepayers, creditors and any other parties" (*id.*) – were invited to be heard in person and/or via the submission of "any comments or materials they want the Commission to consider in connection with the fixing of rates and charges for sewer service or the fixing of a rate structure," *id.*; *cf. Financing Plans*, 40 CUMB. L. REV. at 731 ("Public hearings . . . might have protected the public from the incompetence and criminality that occurred.");

WHEREAS,

XX. In addition to the foregoing public notice, the County Manager sent personal invitations to each of the major sewer creditors, soliciting their participation in the process and advising, *inter alia*, that "[t]he Commission takes very seriously its newly returned authority over the system, and intends to exercise this public trust in a sound, transparent manner . . . on the basis of the very best information and expertise available, gleaned in a manner befitting a representative democracy: public hearings at which everyone affected by the sewer system and sewer rates and charges has the opportunity to hear the evidence on which the Commission's decisions will be based, and to offer any additional testimony, evidence or commentary that may be germane to the ratemaking process," R-0179-0202;

WHEREAS,

YY. The hearings were well-publicized in the local media, and were attended by a substantial number of citizens, ratepayers and public officials, *see, e.g.*, R-0049 & R-0134 (noting the presence of certain members of the Jefferson County delegation to the Alabama Legislature);

WHEREAS,

ZZ. Eighteen citizens spoke publicly during the hearings, providing information and comment on a range of topics pertinent to the Commission's responsibilities under Amendment 73 and Act 619, *see, e.g.*, R-0115 (representative of the Eastlake community explaining how inability to pay high sewer bills has led to the disconnection of water service and attendant public health concerns); R-0119 (mobile home park owner stating that his combined water and sewer bill went from between $500 and $600 per month in 1999 to between $6,000 and $7,000 per month today, and that these increased costs have been passed on in part to low-income tenants); R-0136 (real estate broker with 30 years' experience in the community observing that high sewer rates deter home sales); R-0139 (concerned citizen opining that ratepayers should not bear the full brunt of "the financial [sleight] of hand that was committed" in connection with the financing and

construction of the System); R-0139-42 (retired utility employee explaining the cumulative impact of high natural gas rates, high electricity rates, and high sewer rates, and recommending that the Commission coordinate with the Alabama Public Service Commission, which has jurisdiction over private utility rates); R-0143 (Ensley resident observing that high sewer rates can lead to a vicious spiral of customers leaving the System and thereby increasing the burden on those who remain, who in turn are more likely to leave the System);

WHEREAS,

AAA. The Commission heard sworn testimony from Mr. David Denard, Director of ESD, concerning the operation of the System, the value of the services it provides, the condition of System infrastructure, and the characteristics of future capital expenditures that will be required to properly maintain the System and keep it in compliance with applicable federal and state law, *see* R-0060-82 (transcribed testimony); R-0003-0018 (written presentation); R-0170 (verification);

WHEREAS,

BBB. Among other things, Mr. Denard testified that:

(i.) Residential sewer accounts are charged on the basis of billable sewer flows at the rate of $7.40 per CCF, *see* R-0070; these sewer use charges account for over 90% of the System's revenues, *see* R-0069, and are "highly variable," R-0070;

(ii.) Over the past ten years, the System has experienced a "very consistent decline in the . . . volume of usage from [its] customer base," R-0072; the decline in consumption has "exceeded three percent per year on a very consistent basis for the last ten years," *id.*;

(iii.) "There is a disconnect" between the System's revenues, which are variable, and its costs, which "are, for the most part, fixed," R-0072; in order to address its declining revenue stream, the County "will almost certainly have to [convert] some portion of the current rate structure to a fixed charge," R-0012;

(iv.) The County currently charges a minimum charge (set in 1991) of $2 per month for users with no usage, *see* R-0071; this charge reflects the fact that the System "incurs fixed expenses to provide service for each account regardless of volumetric usage," R-0011; the amount of the charge "needs to be considered and reconsidered," R-0071;

(v.) The County levies industrial surcharges (that is, additional charges imposed on high-strength users based on the strength of their waste, *see* R-0010) and septage charges (to recover the cost of disposing of septic tank waste delivered directly to the System's wastewater treatment plants by

septage haulers, *see* R-0011); neither the industrial surcharges nor the septage rate has changed since 1991, *see* R-0071; *see also* R-0011-12;

(vi.) The County undertook a "tremendous obligation and liability to . . . fix [the *Kipp* Assets]," R-0076; although the *Kipp* Assets were valued in excess of $1.4 billion for accounting purposes, they were "subsequently determined to be in worse condition than assumed" and have been a net liability from a cash-flow perspective, *see* R-0013; and

(vii.) The System's annual revenues are currently approximately $162 million, *see* R-0069; *see also* R-0009; its annual operating expenses are currently approximately $56 million, *see* R-0064; *see also* R-0006; ESD expects to reduce operating expenses by approximately $4 million per year by decreasing personnel expenses, *see* R-0067, and estimates that capital expenditures will average $36 million per year over the next five years, *see* R-0079; *see also* R-0016;

WHEREAS,

CCC. The Commission heard sworn testimony from Dr. Stephanie Rauterkus, a finance professor at the University of Alabama – Birmingham, analyzing and quantifying the burden on the community from sewer rates and charges, including in comparison to other areas of the country, *see* R-0084-0110 (transcribed testimony); R-0019-47 (written presentation); R-0171 (verification);

WHEREAS,

DDD. Among other things, Dr. Rauterkus testified that:

(i.) Relative to median home value, residential sewer bills in Jefferson County impose a "significantly higher" burden than sewer bills in the other 49 large metropolitan areas included in her analysis, *see* R-0108; specifically, Dr. Rauterkus found that the average annual sewer bill as a percentage of median home value across the 50 metropolitan areas she examined is 0.17%, whereas the average annual sewer bill in Jefferson County is 0.33% of median home value, *see* R-0109; *see also* R-0047; indeed, 83% of Jefferson County sewer customers pay more than the national average as a percentage of home value, *see* R-0047;

(ii.) The average annual sewer bill as a percentage of median household income ("MHI") across the 50 metropolitan areas included in Dr. Rauterkus's study is 0.87%; the average bill in Jefferson County is 1.0% of MHI, *see* R-0103; *see also* R-0046; expressed as a percentage of MHI, sewer bills in Jefferson County are higher than sewer bills in 76% of the metropolitan areas she examined, *see* R-0103; *see also* R-0032; and

(iii.) The burden imposed upon economically vulnerable residents of the County is cause for concern, inasmuch as sewer bills already amount to

2.5% of MHI for residents in the lowest MHI decile, *see* R-0097; *see also* R-0028;

WHEREAS,

EEE. The Commission heard sworn testimony from Mr. Eric Rothstein, a nationally recognized utility system consultant and strategic financial planner, concerning the financing of capital improvements and wastewater utility ratemaking in exceptional situations such as Jefferson County's, *see* R-0264-0328 (transcribed testimony); R-0212-58 (written presentation); R-0368 (verification);

WHEREAS,

FFF. Among other things, Mr. Rothstein testified that:

(i.) The amount of debt incurred in respect of the System is "extraordinary": typical long-term indebtedness per customer for most utilities is between $1,100 to $2,000, *see* R-0305-07, whereas the amount of long-term indebtedness per customer in Jefferson County is more than $21,000, *see* R-0205, 0527; *see also* R-0512-13 (Receiver's sworn trial testimony) ("[The Receiver:] [T]ake a look at the investment per customer here and the resulting sewer debt. You know, I have worked in thirty-five different states all across the country [and] I have never seen that type of investment per customer and the debt associated with it.");

(ii.) At this extraordinary level, "[i]t's just not reasonable, appropriate, or . . . likely even possible for the County to increase rates to pay for the outstanding debt as it becomes due and payable, and to pay for the expenses of operating the system in compliance with applicable law," R-0315; *see also* R-0514 (Receiver's sworn trial testimony) (the "three or four hundred percent rate increases" that would be necessary to service the full amount of outstanding sewer debt are "in my mind and my professional judgment . . . excessive");

(iii.) In this unique circumstance, the County could look for guidance in "how private utilities are regulated," such as the concept of disallowing certain imprudently incurred costs, *see* R-0320 ("Private utilities [set rates by] look[ing] at operating expenses and [looking] at the amount of invested rate base, and calculat[ing] a return on that invested rate base; the concept being that those who've invested in the system are entitled to receive a return on their investment. One of the fundamental princip[les] of that is the rate of return is earned on used and useful assets."); *see also* R-0374 (Receiver's sworn trial testimony) ("A rate proceeding for an investor-owned utility is when a utility comes forward to recommend a certain amount of rate increase and there is due diligence and rulings by the Public Service Commission within that state.");

(iv.) Using that analogy, the County would inquire, "[W]hat would be the debt levels associated with a reasonable[,] prudently incurred cost [of building the System] as opposed to where the system is now[?]," R-0321-22; *see also* R-0321 ("Are there assets that are not really at the value that's recorded in the fixed asset records? . . . Are there assets [for which] the book value has been artificially inflated because of the graft and corruption that occurred[?]"); *cf.* R-0457 (Receiver's sworn trial testimony) (describing one basis for the Receiver's proposed rate increase: "[T]here had always been a concern in the public that the higher rates were [necessary because of] the 2002/2003 refinancing of the debt. And so we did an analysis [of] what would [have] happen[ed] if we had never done the auction rate swaps in 2002 and 2003 and had continued to finance improvements with just conventional fixed rate debt, where would rates be today. And the analysis showed that they would be thirty-two percent higher than they are today. So clearly I felt that helped support a twenty-five percent rate increase.");

(v.) The private utility analogy would also require accounting for the fact that the "process of consolidati[ng] a diverse set of different sewer systems of varying quality" (*i.e.*, incorporating the *Kipp* Assets) has the current effect of "distort[ing] information on the balance sheet," R-0303, insofar as nothing was paid for the *Kipp* Assets and therefore no reasonable return would be due on the *Kipp* Assets;

(vi.) "There is not a bright line standard for reasonableness" in wastewater ratemaking, *i.e.*, "[t]here is not some place that we can look to . . . that says $10 per CCF is reasonable and $10.05 is not," R-0323; and

(vii.) Nevertheless, there are certain hallmarks of reasonableness and non-discrimination, including:

a. The principles that "the same reasonable rates need to be applicable to everyone in the same class of customers," R-0323-24;

b. Rates must be "generally applicable to everybody," R-0324;

c. It is appropriate to make "smooth, nondisruptive rate increases . . . that people can plan for, people can manage, people can understand," R-0325;

d. "Rate increases [should not] ask customers to pay for something that's not being used or some costs that were not prudently incurred," *id.*;

e. "It doesn't make sense to set rates that will only pay for operating expenses and debt service costs, but not provide the annual renewal and rehabilitation necessary to keep the system in good working order," *id.*; and

f. "It doesn't make sense to establish rates that deny customers access to a vitally needed service required to maintain public health," R-0326;

WHEREAS,

GGG. The Commission heard sworn testimony from Mr. Lance LeFleur, Director of the Alabama Department of Environmental Management ("ADEM"), concerning the County's nine National Pollutant Discharge Elimination System ("NPDES") permits and resources required to comply with them, including the required upcoming expenditure of an estimated $150 million to comply with new phosphorous limits, *see* R-0543-0553 (transcribed testimony); R-0562 (errata to transcribed testimony); R-0563 (verification);

WHEREAS,

HHH. Among other things, Mr. LeFleur testified that:

(i.) "Over the past 15 years, . . . the County has done a good job" complying with the requirements of the NPDES permits, and "the professionals who operate the County sewer system have done an excellent job running the system," R-0546;

(ii.) ADEM anticipates that it will soon issue renewal permits with stricter phosphorous limitations on two of the County's treatment plants, *see* R-0548, and that compliance with these permits will require more than $150 million in capital and operating expenses, *see* R-0551-52; and

(iii.) The permits provide for a gradual phasing in of the phosphorous limits over the "maximum time period available," R-0551; failure to comply with the limits would constitute a violation of the Clean Water Act and result in "significant adverse financial consequences and possible loss of local control," R-0552-53;

WHEREAS,

III. The major sewer creditors, including the Bank of New York Mellon, in its capacity as Indenture Trustee (the "Trustee"), JPMorgan Chase Bank, N.A., Bank of America, Bank of Nova Scotia, Sociètè Gènèrale, Bank of New York Mellon, State Street Bank and Trust Company, Lloyds TSB Bank plc, Assured Guaranty Municipal Corp., Syncora Guarantee Inc., and an *ad hoc* group of sewer creditors (the "GLC Group"), submitted as part of the public hearing process over a thousand pages of material for the Commission's consideration, including:

(i.) A detailed, 36-page submission from the GLC Group (the "GLC Submission") addressing the long-term financial footing of the System and encouraging the Commission to, *inter alia*, increase the customer base by

requiring mandatory hookups, *see* R-0564-99 (citing ALA. CODE § 11-3-11(a)(15));

(ii.) A 4-page letter (the "Trustee Letter") addressing the public hearing process, identifying what the creditors contend are errors in the evidence before the Commission, "urg[ing] the Commission and its consultants to review and consider carefully all relevant information," *see* R-0600-603, and appending 1,112 pages of exhibits (collectively with the Trustee Letter, the "Trustee Submission"), *see* R-0604-1714, including:

a. The Original Indenture, *see* R-0604-715;

b. Certain creditors' initial response to the Commission's invitation to appear and be heard as part of the ratemaking process, *see* R-0717-37;

c. The Red Oak Consulting Final Technical Report, dated January 31, 2007 (the "Red Oak Report"), *see* R-0738-1013;

d. The Comprehensive Wastewater Cost of Service and Rate Study Report, dated February 3, 2010 (the "Raftelis Report"), *see* R-1014-1135;

e. The BE&K 2003 Final Report (the "BE&K Report"), *see* R-1136-1295;

f. The Paul B. Krebs & Associates Report, dated November 5, 2002 (the "Krebs Report"), *see* R-1296-1308;

g. The Paul B. Krebs & Associates Revenue Analysis, dated March 31, 2003 (the "Krebs Revenue Analysis"), *see* R-1309-53;

h. An earlier draft of the Krebs Revenue Analysis, dated March 13, 2003 (the "Krebs Draft"), *see* R-1354-1407;

i. A draft expert report from Raftelis Financial Consultants, dated 2008 (the "Raftelis Draft"), *see* R-1408-49;

j. The Report of the Special Master, dated January 20, 2009 (the "Special Master Report"), *see* R-1450-1513;

k. The Receiver's First Interim Report on Finances, Operations, and Rates of the Jefferson County Sewer System, dated June 14, 2011 (the "Receiver Report"), *see* R-1514-1600;

l. The December 16, 2008 Resolution suspending the Automatic Rate Adjustment Resolution, *see* R-1602-03;

m. A "chart describing the consultants', Special Masters', and Receiver's rate setting recommendations between 2002 and 2011, as compared to the County's actual rates during that period," *see* R-1604-08;

n. The Proctor Decision, *see* R-1609-63;

o. The Receiver Order, *see* R-1664-86;

p. A draft settlement term sheet dated as of September 14, 2011 (the "September 2011 Term Sheet"), *see* R-1687-88;

q. Excerpts from the transcript of Mr. Peiffer Brandt's May 17, 2010 deposition in the State Receivership Case, *see* R-1689-94;

r. Excerpts from the transcript of Mr. Rothstein's August 23, 2010 deposition in the State Receivership Case, *see* R-1695-98;

s. A letter from Mr. Brandt dated March 5, 2009, *see* R-1699;

t. Excerpts from the transcript of a hearing held February 25, 2009 in the Federal Receivership Case, *see* R-1700-08;

u. Excerpts from the transcript of a hearing held June 1, 2009 in the Federal Receivership Case, *see* R-1709-12; and

v. A set of typed notes, dated October 15, 2009, *see* R-1713-14;

WHEREAS,

JJJ. The GLC Submission compares the System to 28 other sewer systems also operating under EPA consent decrees, *see* R-0573, 0592-93; including by miles of sewer pipe, *see* R-0576, 0578; number of customers, *see* R-0577-78; operating expenses by customer, *see* R-0579; sewer fees as a percentage of median income, *see* R-0581, 0583; property tax as a percentage of median income, *see* R-0582-83; and projected sewer fee increases for 2013-2015, *see* R-0585-86;

WHEREAS,

KKK. Among other topics, the GLC Group discusses:

(i.) The fixed nature of most sewer costs and the consequence that a smaller base of customers will shoulder higher per-account costs as compared to a larger customer base, *see* R-0568, 0575;

(ii.) The comparability of the sewer rate increases contemplated under the September 2011 Term Sheet to average projected increases of comparable sewer systems operating under EPA consent decrees, *see* R-0568;

(iii.) Today's historically low interest rates, *see* R-0569-70; *see also* R-0571 (overview of municipal financing market); and the County's potential ability to access such rates through legislative measures (including the creation of a GUSC and the backing of a State moral obligation pledge), *see* R-0569, 0596-97; and

(iv.) The legality and desirability of requiring mandatory hookups for new construction within proximity to existing sewer lines, *see* R-0595;

WHEREAS,

LLL. The GLC Group further notes that, according to the Special Master Report, "[s]ewer fees for Jefferson County currently represent 96% of total [system] funding," whereas other systems under EPA consent decrees generate only 93% of their revenue from sewer fees, R-0588; accordingly, the GLC Group recommends that the County consider additional revenue generation from other sources, including clean water charges for septic system owners and potential revenue enhancements outlined in the Special Master Report;

WHEREAS,

MMM. The GLC Group further states that "[n]othwithstanding anything in [the GLC Submission], we believe that [the County] is obligated to set sewer fees by the existing formula established in the sewer warrant indenture," R-0567;

WHEREAS,

NNN. The Trustee Letter reiterates the creditors' position "that the County is both obligated and able to raise rates to a level sufficient to pay all of the County's sewer obligations in full," R-0600; *see also* R-0603 ("[T]he Indenture Trustee believes the County can, consistent with Alabama law and recognized models of financial capacity, implement revenue increases over the next several years that, if done in conjunction with effective and efficient operation and administration of the System, and proper planning for future capital needs and utilization of all available resources, will allow the County to fulfill its obligations to the Warrantholders and the residents of Jefferson County. The County will have to increase rates to achieve the revenues necessary to meet its obligations. However, there may be a number of different rate structures that could be implemented that would allow the County to meet its obligations to the Warrantholders and to its residents. Moreover, if the County were to increase revenues from sources other than rate increases, such as through mandatory hook up, reserve capacity fees, clean water fees, or other non-user fees, the rate increases needed to achieve the necessary revenue increases may be reduced.");

WHEREAS,

OOO. In addition, the Trustee Letter states that it identifies "two significant errors . . . in the information disseminated at the public hearings and upon which the

Commission apparently intends to rely," R-0603, and indicates that the Trustee Letter is "being submitted in an effort to correct a number of the County's current assumptions and conclusions about sewer bills and the impact on System customers," R-0602;

WHEREAS,

PPP. Specifically, the Trustee Letter states that Mr. Rothstein and Dr. Rauterkus used inaccurate figures when comparing sewer rates in Jefferson County to sewer rates elsewhere, insofar as Mr. Rothstein "calculated that a monthly bill for a Jefferson County customer would be almost $63.00 if that customer used 10 ccf of water per month," whereas "the average water usage for Jefferson County sewer customers is closer to 6 ccf per month, which would result in an average monthly sewer bill closer to $38.00," R-0602; *see also id*. R-0602-03 (asserting that although Dr. Rauterkus "assumed the average water usage for Jefferson County Sewer customers is approximately 6 ccf per month," she "then assumed that 6 ccf is the same average monthly usage for the other communities in her comparison" – notwithstanding that other communities may have different levels of water usage);

WHEREAS,

QQQ. Mr. Rothstein and Dr. Rauterkus have considered the Trustee Letter, and although they recognize the broader point being made (that average water usage in Jefferson County is below average water usage in certain other areas being compared in their respective analyses), Mr. Rothstein and Dr. Rauterkus note that the data they presented is accurate and complete and is designed to "compare apples to apples" by reflecting bill amounts based on a single, consistent level of usage; *cf*. R-0885 (identical methodology employed in the Red Oak Report submitted by the Trustee, which compares Jefferson County's sewer rate burden to "typical monthly sewer rates" in twelve other jurisdictions based on identical consumption across jurisdictions);

WHEREAS,

RRR. The Trustee Submission confirms and supports much of the other data presented to the Commission, including:

(i.) The burden imposed by the *Kipp* Assets, *see, e.g.*, R-1139 (BE&K Report) ("When the County agreed [to take the *Kipp* Assets], it was not fully aware of the poor condition of the municipal sewers. The impacts from this decision to consolidate are still being felt today."); R-1175 (same; noting that although "the County expected to obtain approximately 9 million linear feet of sewer lines from the municipalities," in fact it "actually took possession of close to 12 million linear feet" – more than quadrupling the size of the System – and the *Kipp* Assets "were in much worse condition than anticipated due to lack of maintenance and annual

improvement"); R-1188 (same; noting that "[t]he additional sewers and the unanticipated lack of maintenance . . . impacted the size and scope of the [Capital Improvement] Program");

(ii.) Significant and unjustifiable overbuilding of the WWTPs, *see, e.g.*, R-1140 (BE&K Report) ("Wastewater flows in the County have shown no increase over the past five years [*i.e.*, 1998-2003], with no significant increase expected. Yet plant investments were made that significantly increased capacity, requiring a huge capital investment. . . . [A] significant portion of the approximately $1 billion spent [as of the BE&K Report in 2003] was for expanding the capacity of the treatment plants in a system that shows no demands for expansion. Several of the plants now have a capacity of 2.5 to 3 times the average daily flow, which significantly increases operating costs and the challenge of proper operations. Therefore, a significant amount of unnecessary capital was invested, which had the effect of increasing the cost of future operations."); R-1196 (identifying "an additional capital burden in excess of $100 million" attributable to certain aspects of the overbuilding); R-1197 (concluding that portions of the Village Creek WWTP are "twice the size necessary to meet the intended use"); R-0895 (Red Oak Report) (noting "significant excess capacity" not justified by reasonable growth assumptions); and

(iii.) Waste, incompetence and abuse, *see, e.g.*, R-1183 (BE&K Report) (discussing the lack of capital planning that led to cancelling three significant projects midway through: "The new Cahaba River trunk sewer (Super Sewer) was forecast to cost $147 million. It was cancelled after spending $62 million. The new Morris Kimberly wastewater treatment plant was forecast to cost $40 million. It was cancelled after spending $15 million. The Trussville trunk sewer was forecast to cost $32 million. It was cancelled after spending $18 million."); R-1192 ("[T]he BE&K team was surprised when we didn't see a more advanced, robust hydraulic model used as a core analysis tool as is typical for large and complex systems [because] [t]ypical [p]rogram cost savings in the order of 25% have been shown to be available" when such appropriate tools are used);

WHEREAS,

SSS. The Trustee Letter states in a footnote that although "the County has stated that the Trustee is calling for rate increases of 400% or more," in fact "the Trustee has never called for such increases in the past and is not doing so now," R-0603;

WHEREAS,

TTT. The Trustee Submission includes the Raftelis Report, which concludes that for the County to increase rates sufficient to pay the $700 million in principal and interest scheduled for fiscal year 2009-2010, "[r]ates would need to be raised by approximately 527% to cover this payment and budgeted O&M expenses,

assuming no impact on demand elasticity," R-1041; *accord* Stay Ruling, 474 B.R. at 244-45 ("[Rates] would increase by a further 527% based on rates desired by the Indenture Trustee.");

WHEREAS,

UUU. None of the creditor submissions in the Record referenced, described, or supported a particular level of revenue increase proposed to be implemented today (as distinct from historical recommendations), other than urging the Commission to comply with the Rate Covenant in the Indenture;

WHEREAS,

VVV. The County has issued three interim reports on the ratemaking process, *see* R-0172-78 (First Report); R-0526-32 (Second Report); R-1715-25 (Third Report); and has described in these reports the private utility ratemaking analogy outlined by Mr. Rothstein and its conceptual and legal bases, *see, e.g.*, R-0528 (Second Report recounting Mr. Rothstein's testimony and noting that under well-settled Alabama law, "'[a] regulated utility's cost of service consists of two basic components: [1] a reasonable return on its property devoted to public service, [*i.e.*,] its cost of capital; and [2] its operating expenses, including taxes and depreciation. The property upon which the Company is permitted to earn a specific rate of return is its statutory rate base. Generally, the . . . rate base [is] *the reasonable value of its property devoted to the public service, calculated by its original cost, less the accrued depreciation*.'" (quoting *Union Springs Tel. Co. v. Ala. Pub. Serv. Comm'n*, 437 So. 2d 485, 486 (Ala. 1983) (emphasis added));

WHEREAS,

WWW. None of the creditor submissions in the Record expressed any disagreement with the private utility ratemaking analogy outlined by Mr. Rothstein, other than urging the Commission to comply with the Rate Covenant in the Indenture, *see, e.g.*, R-0207 (creditors' response to the Commission's invitation to appear and be heard on rates) ("Throughout all of those proceedings, the Trustee has consistently reiterated and supported its position that the County is obligated under the express terms of the Indenture to repay the Sewer Warrants in full, and to 'fix, revise, and maintain' sewer rates sufficient to pay the Sewer Warrants and to operate and maintain the System. Put simply, the [County] is required to comply with the rate covenant and the other covenants set forth in the Indenture. The County has chosen not to comply with its obligations. The [County] does not need to extend an invitation to the Invitees to elicit these views, as they are already well known by the County Commission and have been well established in numerous hearings and pleadings in both state and federal courts over the last four years."); *see also* R-0208 (same, noting that the creditors "are skeptical that these public hearings are anything but a further effort to delay the process");

WHEREAS,

XXX. Insofar as the Receiver, the Raftelis Report, and Mr. Rothstein have independently concluded that it would be unreasonable and infeasible to raise rates to a level necessary to cure all defaults under the Indenture, refill the depleted reserve funds to the required levels, service the debt, and operate the System in a lawful and appropriate manner, *see* R-1574-75 (Receiver Report); R-0514 (Receiver testimony), R-1041 (Raftelis Report); R-0315 (Rothstein testimony), and inasmuch as no citizen, ratepayer, creditor, or regulator has suggested an alternative ratemaking approach (other than simply urging compliance with the Indenture) or indicated any disagreement with Mr. Rothstein's testimony at the public hearings (other than on an unrelated point concerning the proper comparison of typical sewer bills), and inasmuch as the requirements of the Rate Covenant in the Indenture are conditioned on the requirement of Alabama law that the rules and regulations setting sewer rates must be "reasonable and nondiscriminatory," the Commission finds and determines that it is appropriate to consider an approach under which the debt service portion of the System's revenue requirements should be estimated based on the indebtedness the County would be servicing had there been no fraud, graft, waste, gross incompetence and the like in the construction of the System;

WHEREAS,

YYY. The debt service portion of the System's revenue requirements under this methodology has not yet been ascertained, but the Record evidence (including the CH2M Hill analysis and the System's indisputable operating needs) indicates that additional revenue will be necessary under any scenario;

WHEREAS,

ZZZ. Mr. Rothstein recommends that the basic rate structure of the System must change under any scenario, and advises that any such change must be implemented in an appropriate manner that avoids rate shock and enables customers to adjust to and plan for bill impacts under a revised pricing structure;

WHEREAS,

AAAA. Mr. Denard advises, and Mr. Rothstein concurs, that implementing a new rate structure while ensuring cash flow is uninterrupted will require careful coordination with the County's wastewater billing partners, including adequate time to perform and test necessary programming changes in the billing software of the respective billing partners, revise business processes and customer service protocols to facilitate orderly billing, and advise and inform customers about the reasons for, and implications of, the revised rate structure; accordingly, structural changes should take effect on March 1, 2013, or as soon thereafter as can practicably be implemented by the County's billing partners;

WHEREAS,

BBBB. Mr. Rothstein recommends that in view of the foregoing, the County should proceed on an interim basis as follows:

(i.) The County should fundamentally change the sewer rate structure to include a fixed component, a tiered residential volumetric rate (using an inclining block structure), a uniform non-residential volumetric rate, retention of a 15% "watering credit" for residential accounts (which his own research confirms is an appropriate credit), and certain adjustments to septage and industrial waste fees and charges;

(ii.) As part of the implementation of this new structure, the County should initially set a $10 fixed base charge for all accounts with 5/8" meters (scaled upward for other meter sizes), a marginal residential volumetric rate of $4.50 per CCF for all users' first three CCF, a marginal residential volumetric rate of $7 per CCF for all users' next three CCF, a marginal residential volumetric rate of $8 per CCF for all additional usage, a non-residential volumetric rate of $7.60 per CCF;

(iii.) The County should increase its septic hauling charge from its current rate of $30 per thousand gallons to $60 per thousand gallons for septage and $75 per thousand gallons for grease, reflecting the higher cost of service for grease handling;

(iv.) The County should simplify its industrial waste surcharge rates by implementing the charges initially proposed by the Receiver, which are $0.2855 per pound for Suspended Solids ("TSS"), $0.8057 per pound for Biochemical Oxygen Demand ("BOD"), $0.4028 per pound for Chemical Oxygen Demand ("COD"), $0.1447 for Fats, Oils, and Grease ("FOG"), and $2.9273 per pound for Phosphorous;

(v.) The County should implement this new structure and rates on March 1, 2013, or as soon thereafter as can practicably be implemented by the County's billing partners; and

(vi.) The County should closely monitor the amount of revenues generated by the new rate structure and sewer rates, which at this point (prior to implementation) can only be estimated, as it is not known how customers' usage patterns might change in response to the new structure;

WHEREAS,

CCCC. Mr. Rothstein's recommendations are consistent with and supported by the Record, which contains persuasive support for:

(i.) Implementing a fixed monthly charge, *see, e.g.*, R-1046 (Raftelis Report); R-1500 (Special Master Report); R-1589-90 (Receiver Report);

(ii.) Increasing septage and industrial waste rates and charges, *see, e.g.*, R-1058-67 (Raftelis Report) (recommending septic hauling charges of $60 per thousand gallons for septage and $75 per thousand gallons for grease); R-1591 (Receiver's Report) (recommending industrial waste surcharges closely mirroring Mr. Rothstein's recommendations);

(iii.) Retaining the 15% watering credit for residential customers, *see, e.g.*, R-1057 (Raftelis Report) ("Th[e] data validates the continued utilization of the percent of metered water use billing system, and supports an 85% return factor as reasonable."); *see also* R-2070 (Act 619 § 5) (requiring the County to "mak[e] due allowance . . . for water not entering the sewerage [*sic*] system"); and

(iv.) Implementing these important structural changes in a deliberate and careful manner, *see, e.g.*, R-0744 (Red Oak Report); R-1030 (Raftelis Report); R-1263 (BE&K Report); R-1303 (Krebs Report); R-1414 (Raftelis Draft); R-1498 (Special Master Report); R-1580 (Receiver Report), and comports with Act 619's direction to "from time to time when necessary revise" sewer rates and charges, R-2070 (Act 619 § 6(a));

WHEREAS,

DDDD. Mr. Rothstein further recommends that sewer rates and charges be revisited once the revenue effects of the revised rate structure are susceptible to more precise measurement or the Commission is in a position to adjust the County's sewer indebtedness, at which time a rate schedule that will generate revenues sufficient to satisfy all three "silos" of costs (operating expenses, capital expenditures, and appropriate debt service) can be calculated; *cf.* R-1574-75 (Receiver Report) ("In simplest terms, the revenue requirement [for the System] is the sum of the following costs: (1) O&M Expenses; plus (2) required capital expenditures; plus (3) debt service costs . . . ."); R-0682 (Indenture § 12.5(a)) (same, albeit with slightly different phrasing);

WHEREAS,

EEEE. To the extent, however, that the County remains in chapter 9 bankruptcy and the Bankruptcy Court's Net Revenues Opinion has not been reversed or modified on appeal, Mr. Rothstein recommends that rate revenues otherwise available to satisfy the capital expenditure "silo" as part of any further rate adjustments should be suspended for the duration of the Bankruptcy Case, inasmuch as it is neither fair nor reasonable to collect revenues designed to fund prospective capital expenditures if (as is the case by virtue of the Net Revenues Opinion) such revenues will instead be required to be remitted to the Trustee for debt service;

WHEREAS,

FFFF. With respect to suggestions in the Record on the advisability of mandatory hookups, *see* R-0595 (GLC Submission); R-1267 (BE&K Report); R-1597 (Receiver Report):

(i.) Regulations of the Jefferson County Board of Health already require that "[w]henever new construction is proposed or any on-site sewage disposal system malfunctions so as to create a potential or actual public health hazard or nuisance and cannot be reasonably repaired, the owner and/or occupant shall be required to connect to a sanitary sewer system when any portion of the lot or parcel of land in question is within a distance of one hundred (100) feet of a sanitary sewer existing within any public street, alley, or right-of-way which abuts or joins the lot or parcel of land," R-1844;

(ii.) This already-exercised authority is nearly co-extensive with the Commission's sole legislative authority to require property owners to connect to the System, *see* ALA. CODE § 11-3-11(a)(15) ("[N]o county commission shall have the power to require any owner of property to connect to a county sewer system if (i) the property of such owner is served by any other sewer system as of the date (the 'prospective connection date') that the construction of such county sewer system has advanced to the point that operational sewer lines belonging to such system are adjacent to the property of such owner, (ii) the property of such owner is served by a septic tank installed as of the prospective connection date, or (iii) any building to be served by such county sewer system is located on the property of such owner at a distance greater than 200 feet from the collector line of such county sewer system."); and

(iii.) Nothing in the Record indicates that duplicating or supplementing the regulations already promulgated by the Board of Health is necessary or appropriate at this time;

WHEREAS,

GGGG. With respect to suggestions in the Record on the advisability of a County-wide clean water fee or non-user charge, *see, e.g.*, R-0205 (Trustee Letter):

(i.) Act 619 does not authorize imposition of such a fee or charge insofar as it specifies that "sewer rentals or sewer service charges" may be imposed upon and collect from "the persons and property whose sewerage [*sic*] is disposed of or treated by such sewers or sewerage [*sic*] treatment or disposal plants," R-2068 (Act 619 § 1), and does not include in its description of the permissible bases on which sewer rates and charges may be calculated any mention of mere residence in the County as a basis for imposing fees, R-2070 (Act 619 § 5);

(ii.) In any event, evidence in the Record indicates that the function of a clean water fee or non-user charge (*i.e.*, recognition that the entire County benefits from the System) is already performed by the 0.7 mill ad valorem tax (the "Sewer Tax") levied and collected by the County pursuant to Act Number 716, Feb. 28, 1901 ("Act 716"), for "the repair of the sanitary system of the county and to protect the water supplies," *see, e.g.*, R-0940 (Red Oak Report) ("Ad valorem taxes are a general source of revenue that is most appropriately applied to governmental services that have a substantial benefit to the community as a whole and for which it is difficult to distinguish individual benefit."); R-1277 (BE&K Report) (same); and

(iii.) The Commission has no authority to increase the Sewer Tax because the current millage rate of 0.7 mills is the highest rate allowed by Act 716; rather, the Sewer Tax rate can only be raised by amendment of Act 716, or by enactment of another statute to provide additional taxing authority, which in either case would require an act of the State Legislature and a favorable vote of the citizens within the geographic boundary of the County;

WHEREAS,

HHHH. In view of the substantial Record evidence of the burden created by high sewer rates, and consistent with the Commission's charge to "manage, operate, control and administer" the System, R-2067 (Amendment 73), it is necessary and appropriate to implement a conservation program that will help all ratepayers – without regard to income or wealth – calibrate their water usage (and hence their sewer bills) to a level that is sustainable economically, *cf.* R-1345 (Krebs Revenue Analysis) (recommending a lifeline rate), R-1384-89 (Krebs Draft) (same);

WHEREAS,

IIII. To that end, Dr. Rauterkus is working with ESD to develop a conservation program that will involve such practical measures as assisting customers in identifying leaks and inefficient appliances, facilitating the remediation of such leaks and inefficiencies (by, for example, providing low-flow shower heads), and educating customers on conservation matters; and

WHEREAS,

JJJJ. With regard to septage charges in particular, the increased burden on residents who use septic tanks will be significantly less than the percentage change in the County's septage rate, insofar as:

(i.) Typical residential septic tanks in the County have a capacity of 1,000 gallons, although some newer and larger homes have 2,000-gallon tanks;

(ii.) Septage haulers in the County typically charge $300 to pump a residential septic tank;

(iii.) The County currently charges septage haulers $30 per thousand gallons to dispose of septage;

(iv.) Assuming all increased costs were passed on to customers, a 100% increase in the septage rate (from $30 per thousand gallons to $60 per thousand gallons) would add an additional $30 to $60 to the cost of pumping a typically sized residential septic tank;

(v.) Although most on-site sewage guidelines recommend cleaning every five years, it is unlikely that most are cleaned as frequently as recommended; rather, septic tanks are typically cleaned every five to fifteen years; and

(vi.) Accordingly, for a household with a 1,000 gallon septic tank, a 100% increase in the County's septage rate would result in an increase in the cost of pumping the tank from $300 to $330 (*i.e.*, 10%), which (if the household's septic tank were pumped every seven years) would equate to a $0.36 monthly increase.

THE JEFFERSON COUNTY COMMISSION FINDS AND DETERMINES AS FOLLOWS:

I. That, in light of the Stay Ruling, the Commission is able to exercise its constitutional responsibility to make "reasonable and nondiscriminatory rules and regulations fixing rates and charges," R-2067 (Amendment 73) for sewer service;

II. That, to the extent consistent with Amendment 73, *see Shell v. Jefferson County*, 454 So. 2d 1331, 1336-37 (Ala. 1984) (holding that Amendment 73, as "part of the organic law of this state," overrides any conflicting provisions of Act 619), Act 619 obligates the Commission to set sewer rates such that "the revenues derived therefrom will at all times be adequate but not in excess of amounts reasonably necessary" to operate the System and make appropriate capital improvements (there being no issued and outstanding bonded indebtedness, R-2070);

III. That, to the extent consistent with Amendment 73 and Act 619 (*i.e.*, "to the extent permitted by law," R-0682 (Indenture § 12.5(b))), the Commission is obligated under the Indenture to "make from time to time, to the extent permitted by law, such increases and other changes in [sewer] rates and charges" as may be necessary to comply with the debt coverage formulas, *see* R-0682-83 (Indenture § 12.5(b)); *provided, however*, that non-compliance with the Rate Covenant will not be an event of default under the Indenture if "the County employs a utility system consultant to review the System and its existing rates and fees and makes a good faith effort to comply with the recommendations of such consultant," *see* R-0690 (Indenture § 13.1(b)(ii));

IV. That it is appropriate to exercise the Commission's constitutional and statutory ratemaking authority on the basis of the Record adduced during and in connection with the public sewer rate hearings;

V. That: (i) due and sufficient notice of the public sewer rate hearings was provided; (ii) all persons and entities with a stake in the operation of the System (including ratepayers, citizens, creditors, and regulators) have had a full and fair opportunity to make their views known to the Commission and to provide any information they wished the Commission to consider in connection with ratemaking (all of which has been incorporated as part of the Record); and (iii) the Commission has fully and carefully considered the entire Record;

VI. That Mr. Rothstein is a "utility system consultant" employed by the County to "review the System and its existing rates and fees," and that it is proper and appropriate to "comply with the recommendations of such consultant," R-0690 (Indenture § 13.1(b)(ii)), in undertaking the Commission's constitutional and statutory obligation to make reasonable and non-discriminatory rules and regulations fixing rates and charges for sewer service;

VII. That the existing sewer rate structure is due to be replaced;

VIII. That the proposed rate structure recommended by Mr. Rothstein – which includes, *inter alia*, a fixed charge component, a tiered residential volumetric rate (using an inclining block structure), a uniform non-residential volumetric rate, retention of a 15% "watering credit" for residential accounts, and certain adjustments to septage and industrial waste fees and charges – is appropriate and proper, and is consistent with Amendment 73, Act 619, and the Indenture;

IX. That the sewer rates recommended by Mr. Rothstein – which include, *inter alia*, a $10 fixed charge for all accounts with 5/8" meters (scaled upward for other meter sizes), a marginal residential volumetric rate of $4.50 per CCF for all users' first three CCF, a marginal residential volumetric rate of $7 per CCF for all users' next three CCF, a marginal residential volumetric rate of $8 per CCF for all additional usage, a non-residential volumetric rate of $7.60 per CCF, a septic hauling charge of $60 per thousand gallons for septage and $75 per thousand gallons for grease, and upward adjustments of industrial waste fees and charges – are appropriate and proper, and are consistent with Amendment 73, Act 619, and the Indenture;

X. That the course of action recommended by Mr. Rothstein – including implementing the new rate structure and sewer rates on March 1, 2013 (or as soon thereafter as can practicably be implemented by the County's billing partners), closely monitoring the amount of revenues generated by the new rate structure and sewer rates, and revisiting sewer rates and charges once revenue effects can be ascertained – is appropriate and proper, and is consistent with Amendment 73, Act 619, and the Indenture;

XI. That mandatory hookups are already required under regulations issued by the Board of Health, and that no showing has been made that any other or further mandatory hookup

requirement (which would be either duplicative or conflicting) that the Commission may have authority to enact under section 11-3-11(a)(15) of the Alabama Code is necessary or appropriate at this time;

XII. That it lacks authority under state law to implement a clean water fee, non-user charge, or any other similar fee or charge imposed on individuals or entities not connected to the System, and that in any event such a measure would, in effect, constitute an attempt to increase the ad valorem tax (over which the Commission has no authority); and

XIII. That, in light of the significant sewer rates and bill impacts created thereby, it is appropriate and proper to implement a conservation program being developed by Dr. Rauterkus, and that the costs of implementing and administrating such program constitute "Operating Expenses" under the Indenture.

NOW, THEREFORE, BE IT RESOLVED BY THE JEFFERSON COUNTY COMMISSION:

1. That the Jefferson County Sewer Use/Pretreatment Ordinance Adopted May 11, 1982, Ordinance No. 689, at Minute Book 61, pages 237-264, including all amendments thereto, is **REPEALED**;

2. That the Grease Control Program Ordinance Adopted October 3, 2006, Ordinance No. 1778, at Minute Book 152, pages 133-138, including all amendments thereto, is **REPEALED**;

3. That Resolution No. Feb-12-1997-Bess-1, adopted February 12, 1997, at Minute Book 6, pages 256-260, is **REPEALED**;

4. That the Jefferson County Sewer Use Administrative Ordinance, Ordinance No. 1808, set out below, is **ADOPTED**;

5. That the Jefferson County Sewer Use Charge Ordinance, Ordinance No. 1809, set out below, is **ADOPTED**;

6. That a copy of this Resolution, together with the Record, the Jefferson County Sewer Use Administrative Ordinance, and the Jefferson County Sewer Use Charge Ordinance, should be delivered to the Alabama Public Service Commission (the "PSC"), with the Commission's recommendation (consistent with citizen comments at the public sewer rate hearings) that the PSC take the sewer rate burden into account when assessing rates that other utilities in the area are permitted to charge;

7. That the five vacancies on the Board of Arbitration should be filled by no later than December 31, 2012, and to that end invites nominations or recommendations of qualified candidates by any person or entity with a stake in the operation of the System (including citizens, ratepayers, creditors, and regulators), which nominations or recommendations should be directed to the County Manager;

8. That until such time as the Board of Arbitration is constituted and able to act on any requests for review of sewer rates, all pending and future requests for review of sewer rates be held in temporary abeyance by the County Manager;

9. That the Commission will revisit sewer rates and charges no later than August 1, 2014, consistent with Act 619's direction that the Commission "from time to time when necessary revise" rates and charges of the System, R-2070 (Act 619 § 6(a));

10. That, once the revenue effects of the revised rate structure are susceptible to more precise measurement, the Commission will entertain a further rate proposal that will generate revenues sufficient to satisfy operating expenses, capital expenditures, and debt service on an amount that correlates to the value of the used and useful System assets; provided, however, that to the extent that the County remains in chapter 9 bankruptcy and the Bankruptcy Court's Net Revenues Opinion has not been reversed or modified on appeal, the portion of the rate revenues designed to satisfy the capital expenditure needs of the System will be suspended for the duration of the Bankruptcy Case; and

11. That the Minute Clerk shall maintain the Record, as the basis on which the Commission has exercised its authority, *cf. Pilcher v. City of Dothan*, 93 So. 16, 19 (Ala. 1922) ("[M]unicipal governmental action, of which a record is required to be made, cannot be shown by parol; [rather,] the records themselves (unless lost or destroyed) are the best and only evidence of such governmental action."), in the Minute Clerk's office separate and apart from the official minutes of the Commission;

DONE and ORDERED this 6th day of November, 2012.

[**INSERT ORDINANCE 1808]**

[INSERT ORDINANCE 1809]